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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,761	06/25/2003	Christina Smith	000482.00002	2338

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WASHINGTON, DC 20001

EXAMINER

ROSEN, NICHOLAS D

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/602,761	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> Nicholas D. Rosen	<b>Art Unit</b> 3625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 17, 19, 21-32, 34, 36-39, 41-58 is/are rejected.
- 7) ☒ Claim(s) 18,20,33,35 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/03 &amp; 8/21/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 16-58 have been examined.

#### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the abstract is considerably in excess of 150 words. Correction is required. See MPEP § 608.01(b).

#### ***Claim Objections***

Claim 27 is objected to because of the following informalities: In the last line of claim 27, "data associated the system" should be "data associated with the system". Appropriate correction is required.

Claim 29 is objected to because of the following informalities: In the second line of claim 29, "the data source identifier" lacks antecedent basis, strictly speaking. So

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does "said stored status" in the fourth line, which should read "said stored status data".

Appropriate correction is required.

Claims 36-40 are objected to because of the following informalities: In claim 36, "computer-readable instructions for performing steps" should be "computer-readable instructions for causing a computer to perform the steps"; otherwise, the claim could arguably be met by a computer-readable medium having instructions which a computer could display or print, for causing a human being to implement the claimed method.

Appropriate correction is required.

Claim 47 is objected to because of the following informalities: In the third line of claim 47, "data associated the system" should be "data associated with the system".

Appropriate correction is required.

Claims 50-58 are objected to because of the following informalities: In claim 36, "computer-readable instructions for performing steps" should be "computer-readable instructions for causing a computer to perform the steps"; otherwise, the claim could arguably be met by a computer-readable medium having instructions which a computer could display or print, for causing a human being to implement the claimed method.

Appropriate correction is required.

Claim 56 is objected to because of the following informalities: In the second and third lines of claim 56, "data associated the system" should be "data associated with the system". Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 16, 17, and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, and 12 of U.S. Patent No. 6,06,206. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 16, 17, and 19 of the instant application add no new limitations to the method of claims 16 and 12, but only omit limitations, and make trivial changes in wording. Claims 16, 17, and 19 recite no significant limitations not found in claims 16 and 12 of the '206 patent, considered together. Claims 18 and 20 are objected to as depending from rejected claims.

Claims 21-26 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17, 18, 19, 10, and 14 of U.S. Patent No. 6,006,206. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 21-26 and 29 of the instant application add no new limitations to the method of claims 17, 18, 19, 10 and 14

of the '206 patent, but only omit limitations, and make trivial changes in wording. Specifically, claim 21 recites no significant limitations not found in claim 17 of the '206 patent; claim 22 adds no significant limitations not added by claim 18 of the '206 patent; claim 23 adds no significant limitations not found in claims 17 and 19 of the '206 patent, considered together; claims 24 and 26 add no significant limitations not found in claims 17 and 10 of the '206 patent, considered together; claim 25 adds no significant limitations not found in claims 17, 10, and 19 of the '206 patent, considered together; claim 29 adds no significant limitations not found in claims 17 and 14 of the '206 patent, considered together. Claims 27 and 28 are objected to as depending from rejected claims.

Claims 30, 31, 32 and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12, 13, and 9 of U.S. Patent No. 6,006,206. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 30-32 and 34 of the instant application add no new limitations to the method of claims 12, 13, and 9, but only omit limitations, and make trivial changes in wording. Specifically, claim 30 recites no significant limitations not found in claim 12 of the '206 patent; claims 31 and 32 recite no significant limitations not found in claims 12 and 13 of the '206 patent; claim 34 adds no significant limitations not found in claims 12 and 9 of the '206 patent, considered together. Claims 33 and 35 are objected to as depending from rejected claims.

Claims 36, 37, 38, and 39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12 and 9 of U.S.

Patent No. 6,006,206 in view of official notice. Claims 36-39 add no new limitations to the method of claims 12 and 9 of the '206 patent, but only omit limitations, and make trivial changes in wording; except that claim 36 recites a computer-readable medium, which claim 12 of the '206 patent does not. However, claim 12 of the '206 patent recites computer processors carrying out procedures, and official notice is taken that computer-readable media having computer-readable instructions for causing computers to carry out procedures are well known. Hence, it would have been obvious to one of ordinary skill in the art for there to be an appropriate computer-readable medium having computer-readable instructions for carrying out the method. (It is noted that, in the alternative, claims 36-40 would have to be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, since the specification nowhere explicitly describes such a computer-readable medium.) Otherwise, claim 36-38 recite no significant limitations not found in claim 12 of the '206 patent; and claim 39 adds no significant limitations not found in claims 12 and 9 of the '206 patent, considered together. Claim 40 is objected to as depending from rejected claims.

Claims 41-46 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12, 17, 18, and 19 of U.S. Patent No. 6,006,206. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim(s) 41-46 and 49 of the instant application add no new limitations to the method of claims 12, 17, 18, and 19 of the '206 patent, but only omit limitations, and make trivial changes in wording. Specifically,

claims 41, 43, 44, 46, and 49 recite no significant limitations not found in claim 12 of the '206 patent; claim 42 adds no significant limitations not found in claims 12 and 17 and 18 of the '206 patent, considered together; claim 45 adds no significant limitations not found in claims 12 and 19 of the '206 patent, considered together. Claims 47 and 48 are objected to as depending from rejected claims.

Claims 50-55 and 58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17, 18, 19, 10, and 14 of U.S. Patent No. 6,006,206 in view of official notice. Claims 50-55 and 58 add no new limitations to the method of claims 17, 18, 19, 10 and 14 of the '206 patent, but only omit limitations, and make trivial changes in wording; except that claim 50 recites a computer-readable medium, which claim 17 of the '206 patent does not. However, claim 17 of the '206 patent recites a method carried out on a computer, and official notice is taken that computer-readable media having computer-readable instructions for causing computers to carry out procedures are well known. Hence, it would have been obvious to one of ordinary skill in the art for there to be an appropriate computer-readable medium having computer-readable instructions for carrying out the method. (It is noted that, in the alternative, claims 50-58 would have to be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, since the specification nowhere explicitly describes such a computer-readable medium.) Otherwise, claim 50 recites no significant limitations not found in claim 17 of the '206 patent; claim 51 adds no significant limitations not added by claim 18 of the '206 patent; claim 52 adds no significant limitations not found in claims 17 and 19 of the '206 patent,



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considered together; claims 53 and 55 add no significant limitations not found in claims 17 and 10 of the '206 patent, considered together; claim 54 adds no significant limitations not found in claims 17, 10, and 19 of the '206 patent, considered together; claim 58 adds no significant limitations not found in claims 17 and 14 of the '206 patent, considered together. Claims 56 and 57 are objected to as depending from rejected claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 21-29**

Claims 21, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naron et al. (U.S. Patent 4,807,224) in view of the anonymous article "Bits and PC's." As per claim 21, Naron discloses a method of alerting a user to the existence of non real-time information, including the steps of: receiving, at a user's computer, data from a remote source (Abstract; column 5, lines 19-68); and receiving, at the user's computer, status information from which the data can be described as real-time or non real-time as determined by the operational status of a data source corresponding to the data (column 11, line 41, through column 12, line 17). Naron does not disclose displaying on the user's computer the status of the data as being real-time or non real-time, but "Bits and PC's" teaches color to color flashing and a watchdog timer to prevent stale data from being displayed (description of the Supervisor SBD Plus II). Hence, it would have been obvious to one of ordinary skill in the art of data management at the time of applicant's invention to display on the user's computer the status of the data as being real-time or non real-time, for the advantage, as implied by Naron, of not making mistakes by relying on outdated data.

As per claim 22, Naron does not quite expressly disclose that the status information describes the data as real-time when the data source is operating normally and describes the information as non real-time when the data source is not operating normally, but does disclose coming to essentially these conclusions about system failure versus presumed normal operation (column 11, line 41, through column 12, line 17).

As per claim 23, Naron discloses receiving from a remote source at a user's computer a heartbeat signal within a predetermined period of time (column 11, line 41, through column 12, line 17), and "Bits and PC's" teaches displaying the status of data as being real-time (perhaps by displaying it only if it is real-time; see description of the Supervisor SBD Plus II). Hence, it would have been obvious to one of ordinary skill in the art of data management at the time of applicant's invention for the step of displaying to include displaying the status of data as being real-time, for the obvious advantage of displaying data that can be relied upon.

Claims 26, 27, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naron and "Bits and PC's" as applied to claim 21 above, and further in view of official notice. As per claim 26, Naron discloses monitoring a communications system for reception of a heartbeat signal (column 11, line 41, through column 12, line 17), but does not expressly disclose that the heartbeat signal includes a system identifier associated with the remote source. However, official notice is taken that it is well known for data communications to include identifiers associated with a remote source (whether the data source or some kind of intermediary). Hence, it would have been obvious to one of ordinary skill in the art of data management at the time of applicant's invention for the heartbeat signal to include such an identifier, for the obvious advantage of aiding in determining what system or source had failed, or had not failed.

As per claim 27, this distinguishes over the limitations of claims 21 and 26 primarily by reciting displaying the status of *all* data associated with the system identifier

as being non real-time; this would be automatically achieved in the case where the data in question was all of the data from the remote source; furthermore, Naron teaches determining failure of a system, not just of a particular data packet (column 11, line 41, through column 12, line 17).

As per claim 28, official notice is taken that it is well known for data communications to include identifiers associated with a data source; otherwise, see rejection of claim 27 above.

As per claim 29, official notice is taken that it is well known to extract source identifiers from received data; hence, it would have been obvious to one of ordinary skill in the art of data management at the time of applicant's invention to extract the data source identifier from the received data, for the obvious advantage of determining what systems or sources have or have not failed, as implied by Naron. Hence, also, it would have been obvious to compare the extracted data source identifier with stored status data to assist in identifying the systems or sources, and select a display mode, in accordance with Naron and "Bits and PC's."

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naron and "Bits and PC's" as applied to claim 23 above, and further in view of official notice. Naron does not expressly disclose that the heartbeat signal includes an identifier associated with the remote source or identifying the data source, but official notice is taken that it is well known for data communications to include identifiers of the source, or associated with a remote source (whether the data source or some kind of intermediary). Hence, it would have been obvious to one of ordinary skill in the art of

data management at the time of applicant's invention for the heartbeat signal to include such an identifier, for the obvious advantage of aiding in determining what system or source had failed, or had not failed.

**Claims 41-49**

Claims 41, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naron et al. (U.S. Patent 4,807,224) in view of the anonymous article "Bits and PC's." Claims 44-49 are rejected on the same art, and further in view of official notice. Claims 41-49 are parallel to claims 21-29, and rejected on essentially the same grounds set forth above.

**Claims 50-58**

Claims 50, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naron et al. (U.S. Patent 4,807,224) in view of the anonymous article "Bits and PC's." Claims 53-58 are rejected on the same art, and further in view of official notice. Claims 50-58 are parallel to claims 21-29, and rejected on essentially the same grounds set forth above.

***Allowable Subject Matter***

Claims 16-20 would be allowable upon filing of an appropriate terminal disclaimer to overcome the double patenting rejections set forth above.

Claims 30-35 would be allowable upon filing of an appropriate terminal disclaimer to overcome the double patenting rejections set forth above.

Claims 36-40 would be allowable upon filing of an appropriate terminal disclaimer to overcome the double patenting rejections set forth above, and upon rewriting to overcome the objections set forth above.

The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record, Naron et al. (U.S. Patent 4,807,224), discloses a method of identifying non real-time data transmitted through a communications network, the method comprising: receiving at a data processor data from a data source; formatting the data to include an identifier; and transmitting the data via a communications network. Naron does not disclose formatting the data to include a data source identifier corresponding to the data source and a system identifier corresponding to the data processor, and transmitting the *formatted* data to a client site. However, it is in itself well known to transmit data to client sites. Naron discloses determining the operational status of a data source, and the system failure detection of Naron (columns 11 and 12) can be taken as implying generating an internal data source signal status, but Naron does not disclose transmitting the data source signal status to a client site via the communications network. Mano et al. (U.S. Patent 5,793,366) disclose display of the status of devices, which can be data sources, but again, without transmission of appropriately formatted data and data source signal status to a client site. The prior art of record concerns directly does not disclose or reasonably suggest a data processor acting as a server to carry out such a process for client sites, and transmitting data accordingly.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Myer et al. (U.S. Patent 6,574,234) disclose a method and apparatus for controlling network device (using a network heartbeat; note column 13). Ball et al. (U.S. Patent Application Publication 2002/0120648) disclose identifying changes in on-line data repositories.

Nadan (WO 93/23958) (made of record by Applicant) discloses a restricted information distribution system, for displaying restricted information on, and only on, appropriately authorized video screens, but does not disclose a heartbeat signal, or selecting in real-time a stale or real-time display mode.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen, whose telephone number is 703-305-0753. The examiner's telephone number is scheduled to be changed to 571-272-6762 on or about April 13, 2005. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Non-official/draft communications can be faxed to the examiner at 703-746-5574.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Nicholas D. Rosen*

**NICHOLAS D. ROSEN  
PRIMARY EXAMINER**

March 24, 2005